matters not even remotely connected with the issues involved in the appeal. Most of it is a long wrangle between the solicitors in connection with some question of security for costs. It is true that the record was prepared by the appellants' solicitor but this particular bundle of documents would appear to have been agreed to by the respondents' solicitors. It is the duty of solicitors to exercise the greatest possible restraint in incurring costs and if this is not done the court will have to consider ways of penalising those who fail in their duty (see *Lim Siew Neo* v. *Pang Keah Swee* [4] and *Amar Singh* v. *Chin Kiew* [5]).

Barakbah C.J. (Malaya) and **Wee Chong Jin C.J. (Singapore)** concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith*; *Lee & Lee.*

LING BENG SONG & ORS. v. LING BENG SIEW & ORS.

[O.C.J. (McGilligan J.) April 20, 1964]

[Sibu — Civil Suit No. 14 of 1964]

Practice and Procedure — Generally indorsed writ — Necessity to state relief or remedy sought — R.S.C. 1957, O. 2 r. 1, O. 3 r. 1, O. 12 r. 30 & O. 70 r. 1.

The plaintiffs in this case claimed by generally indorsed writ for an order that Sibu Occupation Ticket No. 16872 be sold by public auction or by private treaty or by tender and for other relief which the court may think just and equitable and for costs. The defendants entered conditional appearance and applied to set the writ aside on the grounds that it was "defective and irregular as it discloses no cause of action and does not disclose the title (if any) of the plaintiffs to the subject matter of the writ".

Held: (1) the indorsement on the writ must be sufficiently definite for defendant to know why he is being sued and as there was nothing in the writ in this case to show what sort of action this was, the writ was irregular and did not comply with r. 1 of O. 2 of the R.S.C.;

(2) in the circumstances the service of the writ on the defendants should be set aside.

Cases referred to:—

(1) *Marshall* v. *L.P.T.B.* [1936] 3 All E.R. 83.

(2) *Batting* v. *L.P.T.B.* [1941] 1 All E.R. 228.

(3) *Groundsell* v. *Cuthell* [1952] 2 All E.R. 228.

(4) *Richmond* v. *Branson* [1941] 1 Ch. 968.

(5) *Knowles* v. *Roberts* 38 Ch. D. 270.

(6) *Hill* v. *Luton Corporation* [1951] 1 All E.R. 1028.

(7) *Huntly (Marchioness)* v. *Gaskell* [1905] 2 Ch. 656.

(8) *Truslove* v. *Whitechurch* 133 ER.. 399.

CIVIL SUIT.

George Seah for the plaintiffs.

C. T. Wong for the defendants.

McGilligan J.: This case was, these proceedings were, commenced by a generally indorsed writ of summons dated the 2nd day of April, 1964. The indorsement reads as follows:—

"The plaintiffs' claims are:—

(a) for an Order that Sibu Occupation Ticket No. 16872 be sold by public auction or by private treaty or by tender,

(b) for any other relief which the Court may think just and equitable,

(c) for costs."

The three defendants have entered conditional appearances and have now applied to have the writ set aside on the grounds that it is "defective and irregular as it discloses no cause of action and does not disclose the title (if any) of the plaintiffs to the subject matter of the writ".

The following cases were cited to me: *Marshall* v. *L.P.T.B.*[1], *Batting* v. *L.P.T.B.*[2], *Groundsell* v. *Cuthell* [3], *Richmond* v. *Branson* [4] and *Knowles* v. *Roberts.*[5]

These cases were all of interest and close around the point, as it were; but none were actually on the point, as in none of them were the circumstances exactly the same as here, where the application to set aside was made before a statement of claim has issued, and no amendment of any sort has been asked for by the plaintiffs, the respondents. It does emerge, however, from the case of *Groundsell* v. *Cuthell* [3] and also from the case of *Hill* v. *Luton Corporation* [6] that the court in each case had no doubt that it could in its discretion set aside a generally indorsed writ as being defective (in both these cases the defect was lack of particularity in the indorsement).

The orders and rules which are in my opinion relevant are Order 12 rule 30 and Order 70 rule 1. Order 12 rule 30 provides for application to be made to set aside service of a writ of summons (or, it seems generally accepted, to set aside the writ itself) at the stage in which this case now is. Order 70 rule 1 gives the court a general power to set aside any proceedings as being irregular.

Irregularity consists simply in failing to conform to, to comply with, the rules. The question here is, therefore, does the indorsement on the writ comply with the apposite rules?

Order 2 rule 1 reads as follows:—

"Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the place at which it is intended that the action shall be commenced.".

Now *Odgers* on Pleading and Practice says "The plaintiff must also make on the writ before it is issued an indorsement of claim — that is a statement as to the nature of his claim and the relief or remedy which he seeks —" but the rule says "or" not "and". It is in my opinion enough in a generally indorsed writ to state either the nature of the claim or the relief or remedy required.

Order 3 rule 1 reads:—

"The indorsement of claim shall be made on every writ of summons before it is issued and shall be signed by the plaintiff or his solicitor.".

Where as here, the intention is to set out the relief or remedy required, it is not necessary to state the precise relief or remedy required, but it must be shown what class of relief or remedy is sought. The indorsement must be sufficiently definite for the defendant to know why he is being sued: that, in my judgment, is basic principle. If a defendant does not know he is being sued, how can he decide how best he should react to the service of the writ on him? I do not see how, from the indorsement of claim in this case, the defendants can know why they are being sued. There is nothing at all to show why the sale of the land in Sibu O.T. 16872 is being asked for, or in what way the plaintiffs consider themselves entitled to an order for its sale; there is nothing to show what sort of an action this is. It is my opinion and decision that the indorsement on the writ of summons in this case is irregular, does not comply with rule 1 of Order 2 of the Rules of the Supreme Court, 1957, in that it does not properly or sufficiently state the relief or remedy required.

It remains to decide whether or not I should, in exercise of my discretion, set aside the writ. In the case already quoted, of *Hill* v. *Luton Corporation,*[6] Devlin J. (as he then was) said in the course of his lucid and illuminating judgment — "To set aside a writ for defective indorsement is a very strong thing to do. I have not been referred to any case where it has been done, even where the defect remained uncured, except *Huntly* (*Marchioness*) v. *Gaskell,*[7] where the court regarded the indorsement as tantamount to an abuse of process." I do not consider this a matter for strong action, but something must be done, as the writ as it stands is not good enough. I accordingly choose the milder course of setting aside the service of the writ on each of the three defendants — as was done (according to the judgment in *Hill* v. *Luton Corporation*) in the case of *Truslove* v. *Whitechurch,*[8] no report of which is available here — and I order accordingly.

Service of writ set aside.

PUBLIC PROSECUTOR v. LO AH ENG

[O.Cr.J. (McGilligan J.) April 24, 1964]

[Kuching — Criminal Case No. K 17 of 1964]

Evidence — Adverse witness — Right to cross-examine — Evidence Ordinance (Sarawak Cap. 54), s. 157 — Preservation of Public Security Regulations, 1963,

In this case the accused was charged with consorting with persons carrying firearms and explosives in circumstances which raised a reasonable presumption that they intended to act in a manner prejudicial to public security. Two of the witness called by the prosecution were ruled by the court to be adverse and hostile to the prosecution. They were allowed to be cross-examined by the Deputy Public Prosecutor and they admitted making statements to the police and that what they said in the statements were true.

Held: there is no provision in the Evidence Ordinance of Sarawak giving a right to cross-examine a hostile witness and therefore the statements made by the witnesses, which were elicited in cross-examination, were inadmissible and could not be used as evidence against the accused.

[**Editorial Note:** There is no section in the (Malayan) Evidence Ordinances corresponding to section 157 of the (Sarawak) Evidence Ordinance.]

Case referred to:—

(1) *R.* v. *Golder* [1960] 1 W.L.R. 1169.

CRIMINAL TRIAL.

D. M. Goodbody (Deputy Public Prosecutor) for the Public Prosecutor.

Accused in person.

McGilligan J: The accused stands charged as follows.

"That you on or about the 24th day of October 1963, at Selapong Lup on the Serian Simanggang Road did consort with Pak Sa-San, Chai Siew Min and other persons unknown who were carrying firearms and explosives in circumstances which raised a reasonable presumption that you intended to act with such person in a manner prejudicial to public security and thereby committed an offence punishable under the provisions of regulation 4(1) of the Preservation of Public Security Regulations, 1963".

The prosecution called nine witnesses. Two of these — the main one, Chai Siew Min, and a strong supporting witness (if his evidence is admissible and is believed) Ng Ah Siong — were ruled by the court to be adverse, hostile to the prosecution.

The evidence of the witnesses, other than the two ruled adverse, showed *prima facie* that there was on the 24th of October 1963 an engagement between the security forces and an invading band from Indonesia at a place called Selapong Lup, which is about 3 miles from Goa, which in turn is on the 100th Mile Simanggang Road; that early on the morning of the 25th of October about 8 a.m. the accused was seen to emerge from the jungle near the Goa bus stop on the Simanggang Road by two Ibans who were resting at that bus stop; that he was wearing only shorts, which were wet through, that he had no shoes on and